

# NOTICE OF INTENT

## Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

### Asbestos-containing Materials in School and State Buildings (LAC 33:III.Chapter 27) (AQ139)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.Chapter 27 ( Log AQ139 ).

LAC 33:III.Chapter 27 is being revised to accommodate asbestos contractors and workers so that their accreditation and training period will run concurrently, reduce fraudulent accreditations, and clarify application procedures.

This proposed rule meets the exceptions listed in R.S. 30:2019 (D) (3) and R.S. 49:953 (G) (3), therefore, no report regarding environmental/health benefits and social/economic costs is required.

#### Title 33

#### ENVIRONMENTAL QUALITY

#### Part. III. Air Quality

#### Chapter 27. Asbestos-containing Materials in Schools and State Buildings Regulation

#### §2701. Asbestos-containing Materials in Schools and State Buildings

\* \* \*

[See Prior Text in A-C]

1. This regulation requires local education agencies and the state government to identify friable and nonfriable asbestos-containing material (ACM) in schools and state buildings by visually inspecting schools and state buildings for such materials, sampling such materials if they are not assumed to be ACM, and having samples analyzed by appropriate techniques referred to in this rule. The regulation requires local education agencies and the state government to submit management plans to the Department of Environmental Quality on or before 90 days after promulgation of this regulation, to begin to implement the plans 180 days after promulgation of this regulation, and to complete implementation of the plans in a timely fashion. If an exemption is requested for a state building that contains no asbestos, an inspection report supporting that exemption should be submitted in accordance with Subsection B.3.b.i of this Section. Management plans submitted to and approved by the Department of Environmental Quality prior to the promulgation of this regulation shall meet the inspection and assessment requirements of this Chapter. In addition, local education agencies and the state government are required to employ persons who have been accredited to conduct inspections, reinspections, develop management plans, or perform response actions. The regulation also includes recordkeeping requirements. Local education agencies and the state government may contractually delegate their duties under this rule, but they remain responsible for the proper performance of those duties. Local education agencies and the state government are encouraged to consult with the Air Quality Compliance Division of the Department of Environmental Quality for assistance in complying with this rule.

\* \* \*

[See Prior Text in C.2]

D. All requests, reports, applications, submittals, and other communications pursuant to this Chapter shall be submitted to the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Compliance Division/Asbestos Program, Post Office Box 82135, Baton Rouge, Louisiana 70884-2135.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and R.S. 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended LR 16:1056 (December 1990), amended Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:

#### §2703. Definitions

The terms used in this Chapter are defined in LAC 33:III.111 of these regulations with the exception of those terms specifically defined in this Section as follows:

\* \* \*

[See Prior Text]

*Preventive Measures*—actions taken to reduce disturbance of ACBM or otherwise eliminate the reasonable likelihood of the material's becoming damaged or significantly damaged.

*Removal*—the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a homogeneous area in a school or state building.

\* \* \*

[See Prior Text]

*Small-scale, Short-duration Activities (SSSD)*—tasks that involve less than or equal to three square feet or three linear feet of asbestos-containing material.

\* \* \*

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and R.S. 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:

**§2707. Inspection and Reinspections**

\* \* \*

[See Prior Text in A-A.4.c]

d. assume that some or all of the homogeneous areas are ACM, and for each homogeneous area that is not assumed to be ACM, collect and submit for analysis bulk samples under LAC 33:III.2709 and 2711;

\* \* \*

[See Prior Text in A.4.e-C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and R.S. 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:

**§2711. Analysis**

A. Local education agencies and the state government shall have bulk samples, collected under LAC 33:III.2709 and submitted for analysis, analyzed for asbestos using laboratories accredited by the National Institute for Standards Technology (NIST) or another U.S. EPA approved accrediting authority.

B. Bulk samples shall not be composited for analysis and shall be analyzed for asbestos content by PLM, using the "Method for the Determination of Asbestos in Bulk Building Materials," (EPA/600/R.93/116).

\* \* \*

[See Prior Text in C-D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and R.S. 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), repromulgated by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:

**§2717. Response Actions**

\* \* \*

[See Prior Text in A-I.3]

4. An action may also be considered complete if the volume of air drawn for each of the five samples collected within the affected functional space is equal to or greater than 1,199 L of air for a 25-mm filter or equal to or greater than 2,799 L of air for a 37-mm filter, and the average concentration of asbestos as analyzed by the TEM method in Appendix A of 52 FR, pp. 41857 to 41894, October 30, 1987, for the five air samples does not exceed the filter background level of 70 structures per square millimeter (70 s/mm<sup>2</sup>). If the average concentration of asbestos of the five air samples within the affected functional space exceeds 70 s/mm<sup>2</sup>, or if the volume of air in each of the samples is less than 1,199 L of air for a 25-mm filter or less than 2,799 L of air for a 37-mm filter, the action shall be considered complete only when the requirements of Subsections I.3 or 5 of this Section are met.

\* \* \*

[See Prior Text in I.5-I.6]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and R.S. 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:

**§2719. Operations and Maintenance**

\* \* \*

[See Prior Text in A-D.3]

4. Use work practices or other controls, such as wet methods, protective clothing, HEPA-vacuums, mini-enclosures, and glove bags, as necessary to inhibit the spread of any released fibers.

\* \* \*

[See Prior Text in D.5-F.2.b]

c. notify the Department of Environmental Quality, Air Quality Compliance Division, of the major fiber release episode by phone as specified in LAC 33:I.3923 and in writing as specified in LAC 33:I.3925;

\* \* \*

[See Prior Text in F.2.d]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and R.S. 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended Office of Air Quality and Radiation Protection,

**§2723. Management Plans**

\* \* \*

[See Prior Text in A]

1. Each local education agency or the state government shall develop an asbestos management plan for each school, including all buildings that are leased, owned, or otherwise used as school or state buildings, and submit the plan to the Department of Environmental Quality. After June 20, 1994, each plan must include Form AAC-8, Required Elements for Management Plans (latest revised form can be obtained from the Air Quality Compliance Division). The plan may be submitted in stages that cover portions of the school or state building under the authority of the local education agency or the state government before the deadline specified in LAC 33:III.2701.C.

\* \* \*

[See Prior Text in A.2-H]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and R.S. 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:

**§2735. Exclusions**

\* \* \*

[See Prior Text in A-A.6]

7. An architect or project engineer responsible for the construction of a new school building built after October 12, 1988, or an accredited inspector signs a statement that no ACBM was specified as a building material in any construction document for the building or, to the best of his or her knowledge, no ACBM was used as a building material in the building. The local education agency or the state government shall submit a copy of the signed statement of the architect, project engineer, or accredited inspector to the Department of Environmental Quality and shall include the statement in the management plan for that school or state building.

\* \* \*

[See Prior Text in B-C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and R.S. 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:

**§2739. Agent Accreditation**

\* \* \*

[See Prior Text in A-B.2]

3. Workers who are engaged in maintenance that disturbs more than three square or linear feet of ACBM which does involve its actual removal, enclosure, repair, or encapsulation shall receive their initial and refresher training from a training organization recognized by the Air Quality Compliance Division, Department of Environmental Quality. This training should be in accordance with the asbestos abatement worker course as described in Appendix A Subsection A.5 Initial Training. Workers who participate in the type of project described in this Paragraph must be accredited in accordance with Appendix A of this Chapter and must work under the close direction of an accredited supervisor during any work they perform.

4. Supervisors who are directing workers who may disturb ACM shall receive their initial and refresher training in accordance with LAC 33:III.Chapter 27, Appendix A, Subsection A.4, from a training organization recognized by the Air Quality Compliance Division, Louisiana Department of Environmental Quality. Supervisors who participate in the type of project referenced in this Paragraph are responsible for ensuring that:

\* \* \*

[See Prior Text in B.4.a-B.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and R.S. 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended LR 16:397 (May 1990), amended Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:

**APPENDIX A**

**Agent Accreditation Plan**

The duration of initial and refresher training courses is specified in numbers of days. A day of training equals eight consecutive hours, including breaks and lunch.

In several instances, initial training courses for a specific discipline (e.g., workers, inspectors) require hands-on training. For asbestos abatement supervisors, and workers, hands-on training should include working with asbestos-substitute materials, fitting and using respirators, use of glove-bags, donning protective clothing, constructing a decontamination unit, as well as other abatement work activities. Hands-on training must permit all supervisors, and workers to have actual experience performing tasks

associated with asbestos abatement. For inspectors, hands-on training should include conducting a simulated building walk-through inspection and respirator fit testing.

Training requirements for each of the five accredited disciplines are outlined below. Persons in each discipline perform a different job function and distinct role. Inspectors identify and assess the condition of ACBM, or suspect ACBM. Management planners use data gathered by inspectors to assess the degree of hazard posed by ACBM in schools to determine the scope and timing of appropriate response actions needed for schools. Project designers determine how asbestos abatement work should be conducted. Lastly, workers and contractor/supervisors carry out and oversee abatement work. Each accredited discipline and training curriculum is separate and distinct from the others. A person seeking accreditation in any of the five accredited MAP disciplines cannot attend two or more courses concurrently, but may attend such courses sequentially. All courses, both initial and refresher, shall be completed within 14 days of the commencement of the course.

\* \* \*

[See Prior Text in A]

1. Inspectors. All persons who inspect for ACBM in schools and state buildings must be accredited. All persons seeking accreditation as inspectors shall complete a three-day training course as outlined below. The three-day program shall include lectures, demonstrations, four hours of hands-on training, individual respirator fit testing, course review, and a written examination. The use of audiovisual materials is recommended to complement lectures, where appropriate. The inspector training course shall adequately address the following topics. Hands on training should include conducting a simulated building walk-through inspection and respirator fit testing.

\* \* \*

[See Prior Text in A.1.a-A.1.n]

2. Management Planners. All persons who prepare management plans for schools and state buildings must be accredited. Possession of current and valid inspector accreditation shall be a prerequisite for admission to the management planner training course. All persons seeking accreditation as management planners must complete an inspection training course as outlined above and a two-day management planning training course. The two-day training program shall include lectures, demonstration, course review, and a written examination. The use of audiovisual materials is recommended to complement lectures, where appropriate. The management planner training course shall adequately address the following topics:

\* \* \*

[See Prior Text in A.2.a-A.3.t]

4. Asbestos Abatement Contractor/Supervisors. A person must be accredited as a contractor/supervisor to supervise any of the following activities with respect to friable ACBM in a school or state building: (1) a response action other than a SSSD activity, (2) a maintenance activity that disturbs friable ACBM other than a SSSD activity, or (3) a response action for a major fiber release episode. All persons seeking accreditation as asbestos abatement supervisors shall complete a five-day training course as outlined below. The training course shall include lectures, demonstrations, at least 14 hours of hands-on training, individual respirator fit testing, course review, and a written examination. The use of audiovisual materials is recommended to complement lectures, where appropriate. For purposes of Louisiana state accreditation, asbestos abatement supervisors include those persons who provide supervision and direction to workers engaged in asbestos removal, encapsulation, enclosure, or repair. Supervisors may include those individuals with the position title of foreman, working foreman, or leadman pursuant to collective bargaining agreements. At least one supervisor is required to be at the worksite at all times while work is in progress. Asbestos workers must have access to accredited supervisors throughout the duration of the project. Contracted air-monitoring personnel must be accredited contractors/supervisors. Hands-on training must permit supervisors to have actual experience performing tasks associated with asbestos abatement. The supervisor's training course shall adequately address the following topics:

\* \* \*

[See Prior Text in A.4.a-A.5.k]

B. Examination. A closed-book examination shall be given to all persons seeking accreditation who have completed an initial training course. A person seeking accreditation in a specific discipline shall pass the examination for that discipline prior to receiving a training certificate. For example, a person seeking accreditation as an inspector must pass the inspector's accreditation examination given by the training organization. Each examination shall adequately cover the topics included in the training course for that discipline. Persons who pass and fulfill other associated requirements will receive a certificate indicating that they are trained in a specific discipline. The following are the requirements for examinations in each area:

\* \* \*

[See Prior Text in B.1-E.1.c]

d. persons contracted to perform air monitoring.

\* \* \*

[See Prior Text in E.1.e]

2. Application for Accreditation. The applicant for accreditation must submit the following items:
  - a. A completed Asbestos Accreditation Affidavit, Form AAC-1 that contains:
    - i. name, address, and telephone number of the applicant;
    - ii. social security number of the applicant;
    - iii. name, address, and telephone number of the applicant's employer;
    - iv. identification of the discipline(s) in which accreditation is sought;
    - v. completed statements of regulation possession and understanding and of regulatory enforceability;
    - vi. previous accreditation number, if applicable; and
    - vii. signature by the applicant and the date of application.
  - b. A copy of the current class training certificate. First time applicants must also submit copies of initial training and all subsequent refresher (update) certificates.
    - i. The training course(s) must have at least contingent approval from EPA or be approved by a state authorized by the EPA to approve training courses.
    - ii. Applicants receiving training from providers not recognized by Louisiana must also submit proof of training in current Louisiana regulations from a Louisiana recognized training provider.
  - c. Applications for inspector, management planner, and project designer must include, where applicable:
    - i. high school diploma or the highest level of education achieved; and
    - ii. registration as an architect, or certified industrial hygienist, or engineering degree.
  - d. Applicable fees (LAC 33:III.223).
  - e. A 1" x 1 ¼" photograph of the applicant's face.
3. The completed application with applicable fees (LAC 33:III.223) is to be sent to:  
Louisiana Department of Environmental Quality  
Air Quality Compliance Division  
Asbestos Program  
P.O. Box 82135  
Baton Rouge, LA 70884-2135
4. Persons shall be considered accredited upon receipt of a certificate of accreditation or identification card issued by the department.

\* \* \*

[See Prior Text in E.5-E.6.a]

- b. Beginning September 1, 1996, a qualified individual seeking accreditation shall be issued accreditation certificates, which expire one year after the last day of his or her most recent training course. Accreditation certificates that expire before December 31, 1996, will not require a fee. A qualified individual can maintain continuous accreditation with the same annual expiration/renewal date, provided the individual submits the required documents and receives refresher training within 60 days of his or her expiration/renewal date. If an individual seeking reaccreditation has received refresher training earlier than within 60 days of his or her existing expiration/renewal date or receives training after his or her expiration/renewal date, his or her new expiration/renewal date will be one year after the last day of his or her most current training, provided the applicant has received initial or refresher training in the past year.

\* \* \*

[See Prior Text in E.7-E.8.a]

- b. for failure to notify the Air Quality Compliance Division of changes in status;

\* \* \*

[See Prior Text in E.8.c]

- d. for failure to allow an Air Quality Compliance Division representative to inspect and review sites and documentation;

\* \* \*

[See Prior Text in E.8.e-E.10.b]

- c. Trainers shall not participate both as a student and as an instructor in their own asbestos training courses for certification.
- d. Trainers may not receive training for certification purposes from training organizations that employ them.

\* \* \*

[See Prior Text in F]

1. Submit the latest revision of the Asbestos Training Organization Recognition Application, Form AAC-3, (which may be obtained from the Air Quality Compliance Division) requesting approval to train asbestos agents.

\* \* \*

[See Prior Text in F.2-F.2.g]

3. The completed application with applicable fees for organization and trainer recognition (LAC 33:III.223) are to be sent to:

Louisiana Department of Environmental Quality  
Air Quality Compliance Division  
Asbestos Program  
P. O. Box 82135  
Baton Rouge, LA 70884-2135

\* \* \*

[See Prior Text in F.4-F.5.a]

b. The recognized training organization must keep the Air Quality Compliance Division informed of any change in status of the training organization, such as pending fines, notices of violation, changes in instructor status, etc.

\* \* \*

[See Prior Text in F.5.c]

i. The notification must be received in writing by the Air Quality Compliance Division at least five days prior to class commencement. (Notification must be made at least three days prior to a course when only the state regulations are to be taught.)

ii. Cancellation of classes must be received by the Air Quality Compliance Division before the class should have commenced.

d. Within 30 days of the completion of a class a complete roster of trainees, their social security numbers, and examination grades must be submitted to the Air Quality Compliance Division. In addition, all Louisiana recognized training organizations must submit copies of all training certificates they issue with an attached 1" x 1 1/4" photograph of the face of each trainee.

e. The Air Quality Compliance Division must be notified by phone or in writing of changes in class schedules prior to the date when the course was to have commenced.

\* \* \*

[See Prior Text in F.5.f-F.5.k.v]

6. Applications for trainer recognition shall be completed using the latest revision of the Asbestos Trainer Recognition Form, AAC-4 (latest revision of the form may be obtained from the Air Quality Compliance Division). A resume indicating proof of experience as described in Subsection F.2.d.ii of this Appendix must be attached. The completed application with applicable fees (LAC 33:III.223) is to be sent to:

Louisiana Department of Environmental Quality  
Air Quality Compliance Division  
Asbestos Program  
P. O. Box 82135  
Baton Rouge, Louisiana 70884-2135

\* \* \*

[See Prior Text in F.7-F.9.e.iii]

NOTE: Copies of Forms AAC-1, 3, and 4 previously located here are hereby being deleted. All forms may be obtained from the Air Quality Compliance Division, Asbestos Program.

A public hearing will be held on May 30, 1996, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by the Log AQ139. Such comments should be submitted no later than June 6, 1996, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70810 or to fax number (504) 765-0486.

J. Dale Givens  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Asbestos-containing Materials in Schools and State Buildings**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no anticipated costs or savings to local governmental units. Implementation costs to the department are estimated at less than \$1,000.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS**

(Summary)

No effect on revenue collection for local governments is anticipated. Because the state is switching from a fixed annual expiration/renewal date to an expiration/renewal date based on training expiration of each individual, the department will accrue accreditation fees throughout the year, rather than the majority of the fees being collected in September. The state also benefits by not having to contend with the processing of thousands of accreditations in the month of September. There will be no net gain or loss of revenue on an annual basis.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The regulated community requested that the department change from a fixed annual expiration/renewal date to an expiration/renewal date based on training expiration. There is no significant economic benefit to individuals seeking accreditation. The change will help licensed asbestos contractors maintain the accreditation of their staff. The removal of the exception for Certified Industrial Hygienist from accreditation requirements will have no economic effect. Effective November 1994, under LAC 33:III.5151.P.1.e, all air monitoring personnel must be accredited as contractors/supervisors to conduct air-monitoring. The two Chapters are now consistent with each other.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The only anticipated effect is that photographic IDs will decrease the number of workers with forged credentials. Contractors will have additional evidence of accreditation and training.

Gus von Bodungen  
Assistant Secretary  
9604#044

Richard W. England  
Assistant to the  
Legislative Fiscal Officer